

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 521

IN THE MATTER OF:

D. C. TRANSIT SYSTEM, INC.,)	Served September 2, 1965
)	
Complainant)	Formal Complaint No. 14
)	
v.)	Docket No. 96
)	
WMA TRANSIT COMPANY,)	
)	
Respondent)	

APPEARANCES:

JOHN R. SIMS, JR., and GORDON A. PHILLIPS, Attorneys for
Complainant, D. C. Transit System, Inc.

STANLEY H. KAMEROW, Attorney for Respondent, WMA Transit
Company.

M. B. SPAULDING, JR., Virginia School Parents' Association,
Inc.

D. C. Transit System, Inc., (hereinafter sometimes "Transit"), filed a formal complaint against WMA Transit Company (hereinafter sometimes "WMA"), alleging that WMA was operating a route on 16th and R Streets, S.E., Washington, D. C., and transporting school children from the Anacostia High School, and further alleging that such transportation is not authorized in WMA's Certificate of Public Convenience and Necessity No. 8, and therefore is illegal and in express violation of the Compact. A copy of the complaint was served upon WMA pursuant to regulation. In answer to the complaint, WMA admitted that it had been and was engaged in the transportation alleged, but denied that the transportation was illegal on the basis that the transportation is not subject to the jurisdiction of the Commission because expressly exempt therefrom under the terms of Title II, Article XII, Section 1(a)(3), of the Compact.

The parties having failed to resolve the issue, the Commission ordered a hearing on this matter to be held on July 23, 1965. Both parties were present and the hearing was conducted by an examiner. Two witnesses testified for Transit and four witnesses testified for WMA. The record is comprised of 51 pages of transcript and four exhibits.

Witness Nowell, an employee of Transit, testified that he went to the Anacostia High School, 16th and R Streets, S.E., Washington, D. C., on May 13, 1965. He stated that two WMA buses arrived and parked in front of the school at approximately 3:00 p.m. Five photographs of the buses taken by the witness were made a part of the record (Exhibit No. 1). Mr. Nowell stated that students came out of the school, boarded the buses, and put tickets in the fare box. He also said that when the buses arrived one was designated "School" and the other "Charter."

Transit's second witness, Mr. Cowgill, stated that he was an employee of Transit; that he received instructions to board, if possible, one of the vehicles and that he went to the school on May 11, 1965, for that purpose. He said that he boarded a WMA bus, marked "School", with the children. He then asked the driver if he could ride to Pennsylvania Avenue and was told that he would have to get off at Alabama Avenue. After inquiring as to the fare, he paid 25¢ and rode to 38th Street and Alabama Avenue.

WMA offered four witnesses and three exhibits. Mr. Sardinia, the Comptroller of the company, testified that WMA was requested to provide the service by the police department, the principal of the high school, and a representative of the Superintendent of Schools for the District of Columbia. Mr. Sardinia stated that the transportation is operated in the following manner: A bus is dead-headed to the school from the company garage, and is marked "School Bus." The bus picks up the children at the high school and discharges them at various points within the District of Columbia. Once the school route is ended, the vehicle is dead-headed to terminal points where it goes into regular route operation. Mr. Sardinia also stated that Transit had been requested to furnish this service and had not done so, and that this was one of the reasons that WMA was asked to operate it. Mr. Sardinia also stated that the children purchased their tickets through the school and that the operators were instructed that while the vehicle is used as a school bus only school children and teachers can be transported. The only means of identifying a student is that he originates in the vicinity of the school and has a school ticket. A teacher is identified from the general public on the basis of merely getting on the bus at the high school. He further stated that WMA drivers are not instructed that they cannot take cash fares.

Mr. Cox, a WMA witness, stated that he had operated the school bus himself, that he has assigned the buses to the runs, and that the operators of the vehicles are instructed to operate according to their manifest (Exhibits 2, 3, and 4), and that buses operating this transportation are physically designated as "School Buses", "Charter", or a blank window curtain with a paper cardboard marked "School" in the window. He also stated that the buses are not painted in any particular color so that they would appear to be school buses. Witness Strain testified that he was presently a supervisor, that he had been a bus operator, that he operated the school run from Anacostia High School, and that he had never picked up any body but school children. Witness Stanley, a bus operator, gave similar testimony.

Mr. Spaulding, General Counsel of the Virginia School Parents' Association, Inc., appeared as an intervenor. The interest expressed on behalf of this organization by Mr. Spaulding was related to that concerning prospective transportation of school children and their need for further clarification of the rules and regulations of school bus operations.

Factually, we have here a case wherein a mass transit carrier uses one of its regular route vehicles during a portion of the day to transport school children and teachers from a school. The carrier has attempted to restrict its use during this particular operation exclusively or solely to school children and teachers. The vehicle is usually identified as a "School" bus.

The Compact provides as follows: "1(a) This act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except... (3) Transportation by motor vehicles employed solely in transporting school children and teachers to or from public or private schools;".

The question is whether a motor vehicle is "employed solely" in transporting school children and teachers to or from school, when the vehicle is, for a designated period of time, devoted and used only on such school runs, and then utilized in a carrier's mass transit operations during other periods of the day.

The Commission is of the opinion that the question must be answered in the negative. The motor vehicles performing the school transportation are used at other times as regular buses in a commercial intra and inter-state operation. Respondent's argument that the term "solely" means solely on that particular operation would unduly dilute the exemption beyond what we think the legislatures intended. Exemptions to regulatory statutes are to be strictly construed. Quite simply, these vehicles are not employed solely in school transportation, but to the contrary, the majority of their use lies in rendering mass transit operations. If the legislatures intended the exemption to apply only while the vehicle was operating exclusively in school transportation, they would have so stated. See for example, Virginia Code 56-274, wherein the following language is used: "(1) Motor vehicles employed solely in transporting school children and teachers;" "(7) Motor vehicles while used exclusively in carrying..." (emphasis ours).

The term "employed solely" is, in our opinion, clear and unambiguous. Nevertheless, we have scrutinized the legislative history to discover if there had been a definitive expression by the drafters of our Act. We have found none. The ordinary meaning of the words, however, combined with our knowledge of the industry, merely affirms our conclusions as set out above.

The Commission, therefore, finds that the transportation complained of is not exempt from the certification requirements of Section 4. Since WMA's sole defense was predicated on the exemption basis, we must assume that

it has concluded that it does not have the requisite authority. In any event, it has failed to so allege and prove in this proceeding.

Transit has requested in its complaint that the Commission penalize WMA in accordance with Section 18. WMA in this proceeding has presented a plausible, though erroneous, justification for having performed this transportation. Therefore, we must reject Transit's prayer for the imposition of a penalty.

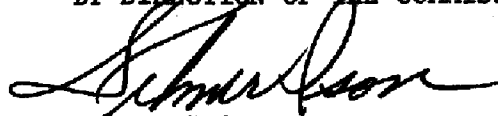
THEREFORE IT IS ORDERED:

1. That WMA Transit Company be, and it is hereby, instructed that the transportation complained of is not exempt from the jurisdiction of this Commission.

2. That WMA Transit Company be, and it is hereby, assessed the cost of this proceeding.

3. That this order become effective September 7, 1965.

BY DIRECTION OF THE COMMISSION

A handwritten signature in dark ink, appearing to read "Delmer Ison", is written over the printed name.

DELMER ISON
Executive Director